

***United States Court of Appeals
for the
District of Columbia Circuit***



**TRANSCRIPT OF
RECORD**

BRIEF FOR APPELLANT AND JOINT APPENDIX

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

*United States Court of Appeals
For the
District of Columbia Circuit*

No. 15,062

FILED MAY - 6 1959

Joseph W. Stewart

CLERK

EDWARD S. COFFEY,

Appellant,

v.

ALBERT F. JORDAN, Individually, and as
Superintendent, Department of Insurance,
District of Columbia,

Appellee.

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APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

RICHARD A. MEHLER

GEORGE J. GOLDSBOROUGH, JR.

2000 K Street, N. W.
Washington 6, D. C.

Counsel for Appellant

(i)

QUESTION PRESENTED

Whether D. C. Code, § 35-426, intends that the hearings provided for therein shall be conducted as quasi-judicial hearings and that the rulings of the Superintendent of Insurance of the District of Columbia issued under the authority of that statute must be supported by findings and conclusions in accordance with the requirements of due process of law.

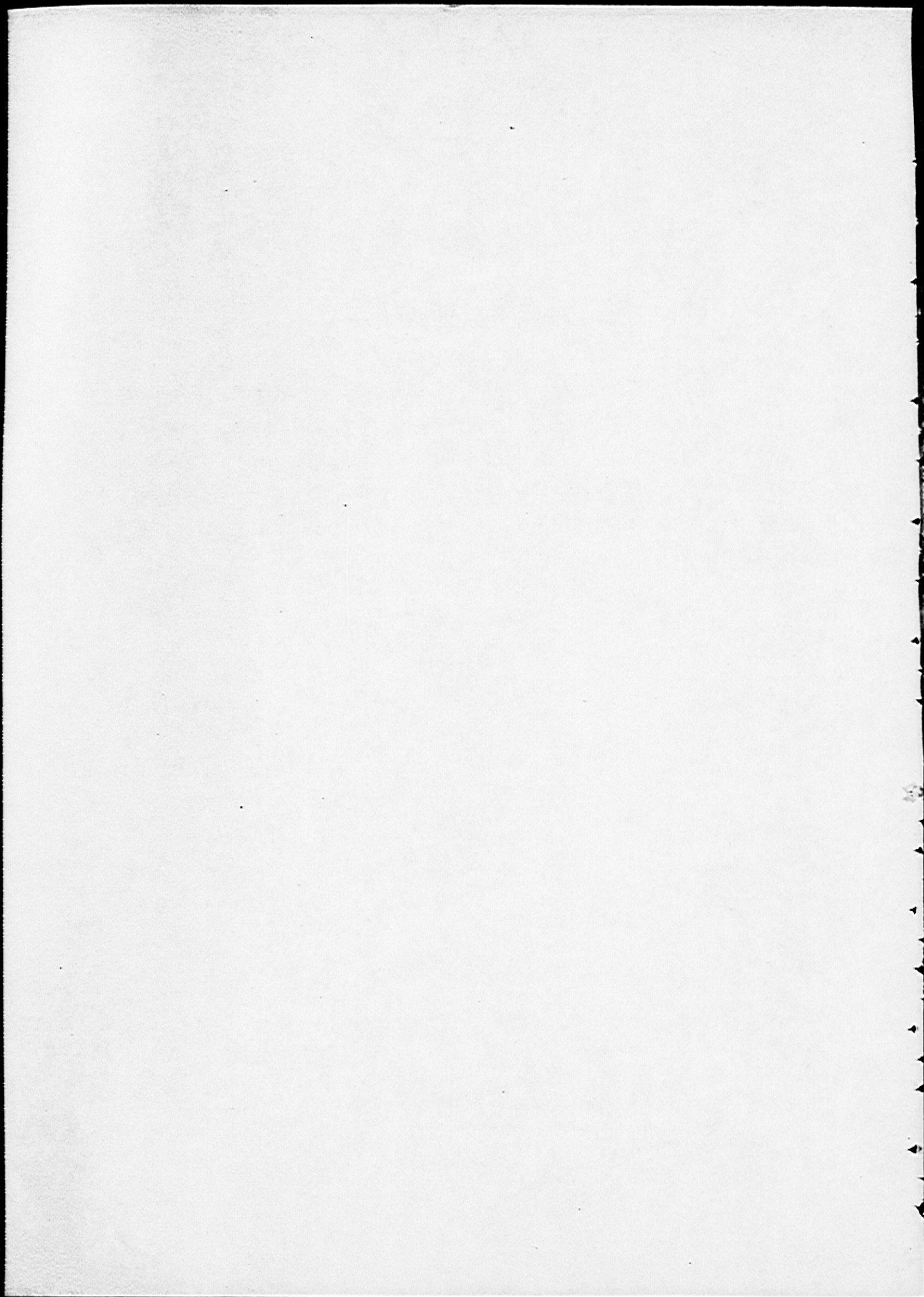
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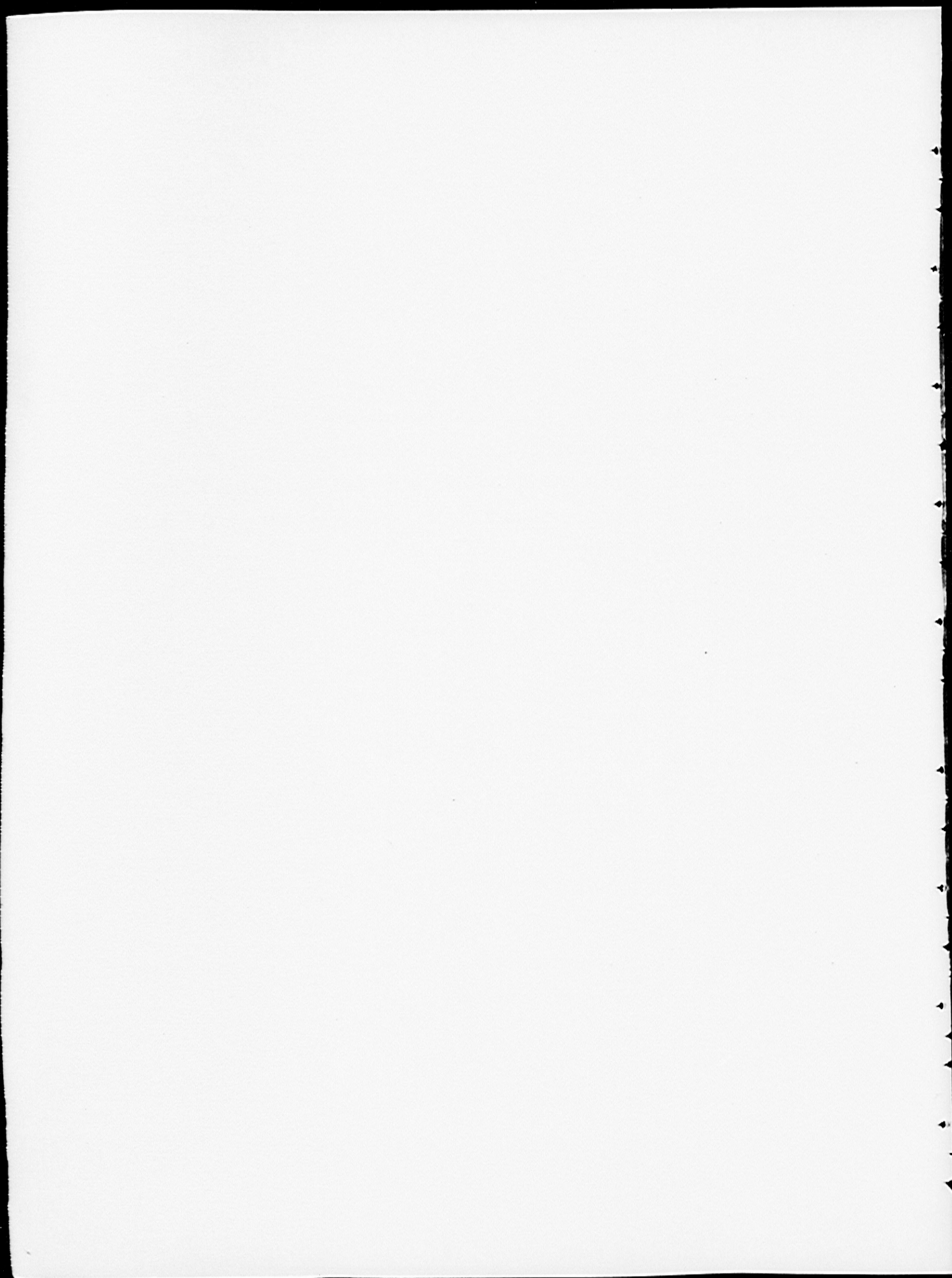
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UNITED STATES COURT OF APPEALS
For The District Of Columbia Circuit

No. 15,062

EDWARD S. COFFEY,

Appellant,

v.

ALBERT F. JORDAN, Individually, and as
Superintendent, Department of Insurance,
District of Columbia,

Appellee.

APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

BRIEF FOR APPELLANT

JURISDICTIONAL STATEMENT

This is an appeal from an Order entered March 27, 1959 by the United States District Court for the District of Columbia granting judgment in favor of the appellee and denying appellant's application for a decree setting aside and vacating and for an injunction enjoining the appellee from enforcing his rule by which he suspended appellant's license as a life insurance solicitor in the District of Columbia.

Jurisdiction of the District Court was invoked under Title 35, sections 426 and 427 of the District of Columbia Code (1951 ed.) and under the due process clause of the Fifth Amendment to the Constitution of the United States.

This Court, likewise, has jurisdiction under Title 35, sections 426 and 427 of the District of Columbia Code (1951 ed.) and also under Title 28, section 1291 of the United States Code.

The pleadings showing the existence of jurisdiction are the Complaint (J.A. 2) and Answer (J.A. 9).

STATEMENT OF THE CASE

For more than twenty years prior to the issuance of the ruling complained of the plaintiff had conducted business as a duly licensed life insurance solicitor in the District of Columbia. By letter dated June 5, 1958 the defendant notified the plaintiff to show cause why his license as a life insurance solicitor in the District of Columbia should not be suspended or revoked under the provisions of D. C. Code § 35-426 (J.A. 6). Hearings on the rule to show cause were held by the defendant on July 15, 1958, July 17, 1958, and July 29, 1958 subsequent to which the defendant issued the following ruling (J.A. 8):

"August 11, 1958

Mr. Edward S. Coffey,
New York Life Insurance Company
Shoreham Building
Washington, D. C.

Dear Sir:

Upon consideration of the record of the hearing afforded you on July 15, 1958, July 17, 1958, and July 29, 1958, in the matter of a complaint by Dr. William B. Russell, I find that you did, in fact, make misleading representations and incomplete comparisons for the purpose of inducing Dr. Russell to

lapse, surrender, or exchange his insurance then in force, as prohibited by sec. 35-426, D. C. Code, 1951 Edition.

I, therefore, hereby suspend your license for a period beginning with the date of this letter and ending April 30, 1959.

Very truly yours,

/s/ Albert F. Jordan

Albert F. Jordan
Superintendent of Insurance"

From the above ruling the plaintiff appealed to the District Court filing his complaint in two counts. The first count sought the convention of a three-judge statutory District Court and questioned the constitutionality of D. C. Code, § 35-426. So far as is pertinent to this appeal, the second count raised and the hearing before the District Court was limited to the question of whether the administrative hearings held by the appellee were quasi-judicial in nature such as to require the appellee to make findings of fact in support of the ruling complained of (J.A. 20).

By Order entered October 22, 1958 the District Court denied appellant's application for the convening of a three-judge District Court. The second count came on for hearing before the District Court on February 18, 1959, at the close of which the case was taken under advisement, and on March 27, 1959 the District Court entered its Order granting judgment for the defendant. It is from that latter judgment that this appeal is taken.

STATUTES INVOLVED

D. C. Code, section 35-426, providing in pertinent part:

"The Superintendent of Insurance may suspend or revoke the license of any life insurance . . . solicitor . . . if, after due investigation, notice

Jurisdiction of the District Court was invoked under Title 35, sections 426 and 427 of the District of Columbia Code (1951 ed.) and under the due process clause of the Fifth Amendment to the Constitution of the United States.

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STATUTES INVOLVED

D. C. Code, section 35-426, providing in pertinent part:

"The Superintendent of Insurance may suspend or revoke the license of any life insurance . . . solicitor . . . if, after due investigation, notice

and a hearing . . . he determines that the . . . solicitor . . . has made any misleading representations and/or incomplete . . . comparison of any policies or companies or concerning any companies to any person for the purpose or with the intention of inducing such person to lapse, forfeit, surrender, or exchange his insurance then in force

Before the Superintendent of Insurance shall revoke or suspend any such license he shall give to the . . . solicitor . . . written notice of the charges and of the hearing, not less than 20 days prior to the time set for such hearing. Such notice shall be forwarded by registered mail addressed to the . . . solicitor . . . at his last-known address

Full opportunity shall be given at such hearing to the . . . solicitor . . . to appear with counsel and be heard upon such charges. Within 30 days after the revocation or suspension of license . . . the . . . solicitor . . . aggrieved may appeal, from the ruling of the Superintendent of Insurance to the court of competent jurisdiction designated in section 35-427. Appeals may be taken from the judgment of said court as prescribed in section 35-427."

D. C. Code, Section 35-427, providing in pertinent part:

"Within thirty days after the revocation or suspension of license or the refusal of the superintendent to grant a license, the general agent, agent, solicitor, or broker or applicant aggrieved may appeal from the ruling of the superintendent to the District Court of the United States for the District of Columbia, in equity wherein, upon the relation of the superintendent, by representation of the corporation counsel, the superintendent shall be designated as defendant and the general agent, agent, solicitor, or broker or applicant as plaintiff, and the said cause shall be docketed in said court and tried as an equity case. Appeals may be taken from the judgment of said District Court of the United States for the District of Columbia to the United States Court of Appeals for the District of Columbia as in other equity cases."

STATEMENT OF POINTS

1. The District Court erred in concluding, as it must have in reaching the judgment that it did, that the administrative hearings held by the appellee were not quasi-judicial in character and not such as to require the appellee to make findings of fact in support of his ruling suspending appellant's license.

2. The District Court erred in making findings and conclusions outside of the record and beyond the sole issue joined at the hearing before the District Court.

SUMMARY OF ARGUMENT

Appellant takes the position that implicit in D. C. Code, § 35-426, is the mandate of a quasi-judicial hearing and ancillary to it the due process of law requirement that the appellee make findings of fact to support his rulings issued thereunder. In the absence of such findings of fact the ruling of the appellee concluding in the statutory language, without more, that the appellant had violated the Act, is void.

At the hearing before the District Court, as revealed by the preamble to the Order appealed from, "the sole issue presented was whether the administrative hearings held by the defendant (appellee) were such as to require the defendant to make findings of fact in support of his ruling complained of." The findings of fact and the conclusions of law entered by the District Court, however, were not limited to that issue but purported to go far beyond it thus resulting in an adjudication not supported by the record.

ARGUMENT

I. THE RULING OF THE DEFENDANT IS ABSENT THE FINDINGS OF FACT REQUIRED BY DUE PROCESS OF LAW AND IS THEREFORE VOID

From a reading of D. C. Code, § 35-426 itself, there can be no doubt that a due process hearing was intended. It contains time-honored language to that effect. Thus, at its outset, the statute confers upon the Superintendent of Insurance the discretionary power to suspend or revoke the license of a life insurance solicitor only if after "notice and a hearing" he determines, as he purports to have done in this case, that the solicitor has violated any of the several prohibitions of the statute. And later this section reads:

"Before the Superintendent of Insurance shall revoke or suspend any such license he shall give to the . . . solicitor . . . written notice of the charges and of the hearing, not less than twenty days prior to the time set for such hearing. Such notice shall be forwarded by registered mail addressed to the . . . solicitor . . . at his last known address Full opportunity shall be given at such hearing to the . . . solicitor . . . to appear with counsel and be heard upon such charges." (Emphasis supplied)

Nor could the statute properly intend otherwise, for the conduct of a business under license is a property right in the suspension, revocation or non-renewal of which the Constitution demands a due process hearing. Columbia Auto Loan v. Jordan, 90 U.S. App. D.C. 222, 196 F. 2d 568 (1952); In re Carter, 89 U.S. App. D.C. 310, 192 F. 2d 15; same case on re-hearing 89 U.S. App. D.C. 320, 192 F. 2d 25, cert. denied, 342 U.S. 862. As this Court said in Atlantic Insurance Agency v. Jordan, 97 U.S. App. D.C. 184, 229 F. 2d 758, where an order was sought to compel the same Superintendent of Insurance to renew a license:

"A renewal, after all, differs in many ways, from an original grant. Property rights have become vested."

In Jordan v. American Eagle Fire Ins., 83 U.S. App. D.C. 192, 169 F. 2d 281, this Court had before it an action of the Superintendent of Insurance under the so-called "Rating Act" (D.C. Code, § 35-1403). Noting that the Rating Act required on the part of the Superintendent of Insurance no more than an "investigation" before a determination, this Court discussed what would apply in the event that the Act provided for a "hearing." Distinguishing between the two, this Court said at p. 285:

"There is no reason to take the term 'investigation' at other than its face value. A quasi-judicial hearing, at which opposing parties present their claims and evidence and have their controversies determined, is not an 'investigation,' and a requirement that there be an investigation carries with it no command that a quasi-judicial hearing be conducted. This statute is not like those which contain legislative mandates for 'hearings'"

In illustrating the differences between a statute requiring an "investigation" and one requiring a "hearing" this Court at page 286 gave Sec. 35-426 as an example of the latter type of statute, and that is the very section under consideration in the case at bar. Assuming the requirement of a hearing, this Court said at p. 287:

"If we were compelled to read into this statute a requirement for a hearing before the Superintendent, we would also have to read into it the powers and requirements ancillary to such a hearing; including oaths, subpoenas, findings, conclusions, and a record of the proceeding."

The Court further addressed itself to this principle at p. 290 of its opinion where it said:

"In modern times, most states, like the federal government, provide for a full hearing in the course of the administrative consideration, thus making that proceeding quasi-judicial. In such instances the addition of a judicial review of the record, findings and conclusions made below, constitutes a combination of actions which satisfies the requirements of due process."

It is therefore clear that where a statute like Section 35-426 under which the plaintiff's license was suspended provides for a "hearing" and for "full opportunity . . . at such hearing . . . to appear with counsel and be heard upon such charges" that a due process hearing is irresistibly implied at the administrative level. In that event more than just a hearing is required. There must also be findings of fact to support whatever conclusions are reached.

In the instant case, the ruling in question is completely devoid of any factual findings. Indeed, the ruling makes but the naked determination couched in the statutory language that a violation was committed. And this determination, according to the defendant as set forth in his pre-trial statement (J.A. 14), is supported by "the record of the administrative proceeding," a record consisting of 361 pages of testimony and a number of exhibits, most of which are of a technical nature.

As an excuse for not making findings of fact and for thereby having violated the requirements of law laid down by the cases in which he himself was a party, the defendant through his counsel advanced at the hearing that the defendant was "just an insurance man" and not a lawyer (J.A. 18). Surely by such a statement the defendant does not mean to say that the head of a public office, particularly one who wields, as his counsel admits, great powers and sweeping authorities and who assumes the exercise of quasi-judicial powers, is relieved by any lack of qualifications of the duty to provide constitutional safeguards.

That findings of fact must be made and that they are an integral part of due process of law under the circumstances of this case has been voiced and affirmed and reaffirmed by the Courts. In this jurisdiction the proposition, its rationale, and guides for carrying it out, were announced by this Court in Saginaw Broadcasting Co. v. Federal Communications Com'n., 68 U.S. App. D.C. 282, 96 F. 2d 554, cert. denied, 305 U.S. 613, in such plain language as to make paraphrase presumptuous. There the Court said:

"The requirement that courts, and commissions acting in a quasi-judicial capacity, shall make findings of fact, is a means provided by Congress for guaranteeing that cases shall be decided according to the evidence and the law, rather than arbitrarily or from extralegal considerations; and findings of fact serve the additional purpose, where provisions for review are made, of apprising the parties and the reviewing tribunal of the factual basis of the action of the court or commission, so that the parties and the reviewing tribunal may determine whether the case has been decided upon the evidence and the law or, on the contrary, upon arbitrary or extralegal considerations. When a decision is accompanied by findings of fact, the reviewing court can decide whether the decision reached by the court or commission follows as a matter of law from the facts stated as its basis, and also whether the facts so stated have any substantial support in the evidence. In the absence of findings of fact the reviewing tribunal can determine neither of these things. The requirements of findings is thus far from a technicality. On the contrary, it is to insure against Star Chamber methods, to make certain that justice shall be administered according to facts and law. This is fully as important in respect of commissions as it is in respect of courts.

"In discussing the necessary content of findings of fact, it will be helpful to spell out the process which a commission properly follows in reaching a decision. The process necessarily includes at least four parts: (1) evidence must be taken and weighed, both as to its accuracy and credibility; (2) from attentive consideration of this evidence a determination of facts of a basic or underlying nature must be reached; (3) from these basic facts the ultimate facts, usually in the language of the statute, are to be inferred, or not, as the case may be; (4) from this finding the decision will follow by the application of the statutory criterion."

Even where a passport is denied by the Secretary of State under its Passport Regulations, findings of fact are necessary. Boudin v. Dulles, 98 U.S. App. D.C. 305, 235 F. 2d 532. See also Goldman v. Pink, 1 N.Y.S. 2d 562, 253 App. Div. 862, where the decision of the Superintendent of Insurance of the State of New York cancelling the

petitioner's license as an insurance broker was annulled and set aside on the ground that the Superintendent had failed to make findings as to the identical act or acts constituting the violation.

Upon an examination of the principle involved, in light of the appellee's ruling, it plainly appears that the appellee has failed utterly to abide by the legal criteria attaching to the actions of a fact-finding, quasi-judicial hearing officer, which he is.

II. THE FAILURE OF THE DEFENDANT TO MAKE FINDINGS OF FACT FORECLOSES A SHOWING THAT THE RULING IS CONTRARY TO THE EVIDENCE AND TO LAW AND RENDERS NUGATORY A COURT REVIEW

The failure of the appellee to make findings of fact or to point to or identify the evidence upon which he relied in issuing his ruling has made it impossible for the appellant to show, as he could have done, that the ruling is contrary to the evidence and to law. Certainly the appellant should not be expected, and most important, the Court should not be imposed upon to review 361 pages of the reporter's transcript of the administrative hearings with its multiple exhibits and then to speculate as to what part or parts of that record might have caused the appellee to conclude that there had been a violation of the Act. Only the defendant is familiar with and only he can say what mental processes he employed in reaching his conclusion. In the words of Mr. Justice Stephens in Tri-State Broadcasting Co. v. Federal Communications Com'n., 68 U.S. App. D.C. 292, 96 F. 2d 564, 565:

"We cannot review the evidence to determine whether or not there is substantial support therein for findings not made."

At 16(A), C.J.S., Constitutional Law, section 628, p. 866, it is said that the contesting parties are entitled to know the facts relied on by the administrative tribunal in deciding the case. Apropos it is that as authority for this proposition the authors cite among other cases the

case of Jordan v. American Eagle Fire Ins., supra, decided by this Court.

Appellant submits that it is untenable for the defendant on one hand to enthusiastically embrace the authorities of his office involving the exercise of quasi-judicial powers and on the other hand to disregard the principles underlying an administrative determination of controversies that are axiomatic to due process of law. The inevitable consequence of what the defendant failed to do here is to thwart the appellant's right to a judicial adjudication of an administrative action which has sorely aggrieved him.

III. THE FINDINGS AND CONCLUSIONS OF THE DISTRICT COURT ARE INCONSISTENT AND BEYOND THE SCOPE OF THE ISSUE PRESENTED AT THE HEARING BELOW

In his complaint, throughout the course of the proceedings before the District Court (J.A. 15-19), and in this appeal, the appellant pitched his case upon the pronouncement of this court in Jordan v. American Eagle Fire Ins., supra. He committed himself to the clear and unambiguous statement of this court that the appellee was required by reason of the quasi-judicial nature of the hearing called for under the statute in question to make findings and conclusions. And this position taken by appellant was expressly recognized by the District Court which in the preamble to its order appealed from recited (J.A. 20):

"At the hearing before the Court, the sole issue presented was whether the administrative hearings held by the defendant were such as to require the defendant to make findings of fact in support of his ruling complained of."

Notwithstanding, the District Court purports to have concluded as a matter of law, without any underlying findings of fact whatsoever, that there was substantial evidence to support the appellee's ruling. In arriving at the conclusion of law that "the decision of the defendant (appellee)

was supported by substantial evidence," the Court disregarded the injunction of Rule 52, Fed. R. Civ. P. by failing to make findings of fact, precisely as the appellee had done earlier. The error, therefore, has been compounded. So that to the same extent that the appellant was denied in their absence the right to attack findings required to be made by the appellee in the court below, he is likewise denied the right in this Court in their absence to attack the findings omitted by the District Court.

Even had the District Court made findings they would have represented no more than speculation as to the findings that the appellee might have made if he had made any. For it is only the appellee who knows and who can tell us on what factual basis he issued the ruling.

Lastly, no indication was given by the court below, and the record is barren of any hint either from the Court or counsel, that the cause would be adjudicated on any issue other than the question of whether or not the appellee was required to make findings and conclusions in accordance with due process of law.

IV. APPELLANT HAS SUFFERED AND IN THE FUTURE
WILL CONTINUE TO SUFFER IRREPARABLE INJURY

It may hardly be gainsaid that the appellant in the loss of his license suffered an irreparable injury to his business and his business reputation necessarily and incalculably affecting adversely his ability to carry on his business. And this injury has continued and will continue beyond the date of the suspension period.

CONCLUSION

For the foregoing reasons it is respectfully submitted that the judgment of the District Court should be reversed and the cause remanded for entry of judgment in favor of the appellant.

Respectfully submitted,

RICHARD A. MEHLER

GEORGE J. GOLDSBOROUGH, JR.

2000 K Street, N. W.
Washington 6, D. C.

Counsel for Appellant



(1)

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JOINT APPENDIX

IN THE
UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

EDWARD S. COFFEY,
1220 Lawrence Street, N. E.,
Washington, D. C.

Plaintiff,

v.

ALBERT F. JORDAN, Individually,
and as Superintendent of
Insurance of the District of
Columbia,
Old District Building,
Washington 1, D. C.,

Defendant.

Civil Action

No. 2318-58

RELEVANT DOCKET ENTRIES

1958

Sept. 10	Complaint
Oct. 1	Answer of Defendant to Complaint.
Oct. 16	Motion of Plaintiff for Preliminary Injunction, Points and Authorities, Affidavit.
Oct. 21	Points and Authorities of Defendant in Opposition to Motion for Preliminary Injunction and on Applica- tion for convening a 3 Judge Court.

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Oct. 22 Application of Plaintiff for Three Judge Court.
 Oct. 22 Order Denying Application for Convening of Three
 Judge District Court. -- Matthews, J.
 Nov. 5 Findings of Fact and Conclusions of Law; Order Denying
 Plaintiffs Motion for Preliminary Injunction --
 Tamm, J.
 Nov. 5 Order advancing cause for trial -- Tamm, J.
 Dec. 11 Certificate of Readiness

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Jan. 6 Pretrial Proceedings - Pine, J.
 Feb. 18 Heard and taken under advisement - Jackson, J.
 March 2 Memorandum of defendant
 March 23 Brief of Plaintiff
 March 23 Suggestion of Expiration of time for filing defendant's
 Brief.
 March 23 Reply Brief of Plaintiff
 March 23 Finding for Defendant v. Plaintiff -- Jackson, J.
 March 27 Findings of Fact and Conclusions of Law -- Judgment
 for Defendant v. Plaintiff -- Jackson, J.
 March 30 Notice of Appeal of Plaintiff from Order of 3/27/59
 April 6 Preliminary record on Appeal delivered to U.S.C.A.
 April 29 Transcript of Proceedings 2-19-59

[Filed September 10, 1958]

COMPLAINT FOR INJUNCTIVE AND OTHER RELIEF

Comes now the plaintiff and for his claim for relief herein respectfully states to the Court as follows:

Count I

(To Enjoin the Enforcement of an Act of Congress)

1. That this first count arises under the Fifth Amendment to the Constitution of the United States, specifically the due process clause

thereof; and sections 2282 and 2284, Title 28 of the United States Code.

2. That the defendant is sued individually and as the Superintendent of Insurance of the District of Columbia.

3. That for a long time prior to August 11, 1958, the date of the defendant's order hereinafter mentioned, the plaintiff acted and conducted business as a life insurance solicitor in the District of Columbia under and by virtue of a license duly issued to him by the defendant pursuant to law.

4. That by letter dated June 5, 1958, a copy of which, together with a copy of the complaint therein referred to, are attached hereto as Exhibits "A" and "B" respectively and incorporated herein by reference, the defendant notified the plaintiff to show cause why his license as a life insurance solicitor in the District of Columbia should not be suspended or revoked under the provisions of D. C. Code, § 35-426 (1951), 48 Stat. 1140 (1934), as amended, providing in pertinent part as follows:

"The Superintendent of Insurance may suspend or revoke the license of any life insurance . . . solicitor . . . if, after due investigation, notice and hearing, either before him or before any salaried employee of the insurance department designated by him whose report he may adopt, he determines that . . . the . . . solicitor . . . has made any misleading representations and/or incomplete . . . comparison of any policies or companies or concerning any companies to any person for the purpose or with the intention of inducing such person to lapse, forfeit, surrender, or exchange his insurance then in force"

5. That hearings on the said rule to show cause were held by the defendant on July 15, 1958, July 17, 1958, and July 29, 1958, after which by letter dated August 11, 1958, a copy of which is attached hereto as Exhibit "C" and incorporated herein by reference, the defendant suspended the plaintiff's said license for a period beginning with the date of said letter and ending April 30, 1959.

6. That the Act of Congress above quoted, under the purported authority of which the said suspension of plaintiff's license was ordered, is void as repugnant to the due process clause of the Fifth Amendment to the Constitution of the United States in that it fails to provide reasonable standards for determining, and is vague and uncertain in its description as to what shall constitute a violation thereof, particularly what shall constitute a "misleading representation" and an "incomplete comparison" and in that it confers upon the defendant the arbitrary right to impose the penalties therein referred to without limitation.

7. That the defendant unless enjoined threatens to and is in fact enforcing his said order suspending the plaintiff's license thereby causing immediate and irreparable injury to the plaintiff.

WHEREFORE, the premises considered, the plaintiff prays:

1. That this Court issue an injunction pendente lite and permanently enjoining the defendant, his agents, servants, employees, and attorneys from the enforcement, operation, and execution of the Act of Congress herein complained of and from the enforcement of the said order of the defendant dated August 11, 1958 suspending the plaintiff's license as a life insurance solicitor in the District of Columbia.

2. And for such other and further relief as to the Court may seem just and proper.

Count II

(Statutory Appeal from a Ruling Of the Superintendent of Insurance)

1. That jurisdiction for this second count is invoked under D. C. Code, § 35-426 and 35-427 (1951); and also under the Fifth Amendment to the Constitution of the United States, specifically the due process clause thereof.

2. - 5. For paragraphs 2, 3, 4, and 5 of this second count the plaintiff incorporates by reference the allegation of paragraphs 2, 3, 4, and 5 of the first count.

6. That the action taken by the defendant in conducting the said hearings and in suspending the plaintiff's license as aforementioned was

arbitrary, capricious, and contrary to law in that specifically but not exclusively nor by way of limitation:

(a) The findings of the defendant recited in his said order dated August 11, 1958 (Exhibit "C") are not supported by the evidence but rather are contrary to the evidence introduced at the hearings aforementioned.

(b) The said order does not contain and the defendant otherwise failed to make the proper findings and conclusions required by due process of law.

(c) The defendant invited and permitted private counsel for the complaining witness to actively participate in the said hearings and in effect to act as counsel for the defendant in the place and stead of the Corporation Counsel for the District of Columbia and thereby unlawfully abdicated and delegated the powers and authorities vested in defendant and in the Corporation Counsel with the result that the hearing was conducted as an adversary hearing between the complaining witness and the defendant in a manner not contemplated or intended by law.

WHEREFORE, the premises considered, the plaintiff prays:

1. That the said Order dated August 11, 1958 suspending the plaintiff's license as a life insurance solicitor in the District of Columbia be vacated and set aside;

2. That this Court issue an injunction pendente lite and permanently enjoining the defendant, his agents, servants, employees, and attorneys from enforcing his said Order dated August 11, 1958, suspending the plaintiff's license as a life insurance solicitor in the District of Columbia and requiring the defendant to maintain the plaintiff's said license in full force and effect.

3. And for such other and further relief as to the Court may seem just and proper.

/s/ Edward S. Coffey

[Jurat dated September 10, 1958]

[Filed September 10, 1958]

EXHIBIT "A"

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Department Of Insurance
Washington

REGISTERED MAIL
RETURN RECEIPT REQUESTED

June 5, 1958

Mr. Edward S. Coffey,
New York Life Insurance Company,
Shoreham Building,
Washington, D. C.

Dear Sir:

Pursuant to section 35-426, D. C. Code, 1951 edition, notice is hereby given to you to appear in this office on July 1, 1958, at 10 o'clock, A.M., and show cause, if any you have, why your license as a life insurance solicitor should not be suspended or revoked, or why, in lieu of such penalty, you should not be subjected to a fine, because of a complaint by Dr. William B. Russell of this city, (a copy of which is enclosed herewith for your information) from which it appears that in connection with the sale of a policy of life insurance to Dr. Russell, you may have made to him misleading representations or incomplete or fraudulent comparisons for the purpose or with the intention of inducing Dr. Russell to lapse, forfeit, surrender, or exchange his insurance then in force, or that, in connection with your dealings with Dr. Russell, you may have shown yourself to be untrustworthy or incompetent to act as a life insurance agent or solicitor.

Very truly yours,

/s/ Albert F. Jordan

Superintendent of Insurance

Enclosure

[Filed September 10, 1958]

EXHIBIT "B"

May 20, 1958

The Honorable Albert F. Jordan,
Superintendent of Insurance,
District Building,
14th & E Sts., N. W.,
Washington, D. C.

Dear Sir:

I am desirous of filing this complaint against Edward S. Coffey, Insurance Agent for the New York Life Insurance Company with offices in the Shoreham Building, Washington, D. C., as well as against the New York Life Insurance Company.

I base this complaint on the fact that when the aforesaid policy was sold to me by Mr. Coffey he failed to explain to me all the rights, privileges and advantages existing in Insurance Policies No. 21117692, dated May 1, 1948, and No. 21152654, dated May 26, 1948, which I was then carrying and which Mr. Coffey advised me to discontinue.

Mr. Coffey induced me to apply for \$25,000.00 worth of new insurance on the premise that it would be more advantageous to me to have \$25,000.00 coverage at \$942.45 a year than continuing with the two Endowment policies noted above which were issue in 1948, and which required four quarterly payments totaling \$1,136.80 annually.

Moreover, Mr. Coffey advised me to continue the aforesaid Endowment policies on a monthly basis until I was ready to cash them in after the new policy was approved, or replace them and submit an illustration to me to show the profit I would derive by such replacement.

The old policies had Waivers of Premium and Double Indemnity benefits. The new policy, No. 23094268, was issued without a Waiver of Premium proviso, with a semi-annual premium payment of \$574.75, - total annual payment of \$1,149.50.

I was also advised by Mr. Coffey that if I would accept the new insurance I would have \$25,000.00 in insurance instead of \$18,000.00, and in addition thereto I could get \$8,000.00--\$9,000.00 on the old policies when I cashed them in.

Mr. Coffey failed to advise me about the contestable period in connection with the new policy and about option differences between the new and old policies.

To continue, I was not advised by Mr. Coffey that I could have Endowment policies changed to ordinary life as of the date of original issue. Moreover, I have since learned that Mr. Coffey failed to explain to me as he should have, all the other rights, privileges and advantages existing in the policies I was then carrying.

In light of Mr. Coffey's actions, in my case, noted above, I unnecessarily paid out \$1,149.50 in premiums.

I have been advised that the Business Practices Committee of the D. C. Life Underwriters Association "strongly-reprimanded" Mr. Coffey for his "actions in the Russell Case".

Respectfully,

/s/ Dr. William B. Russell
213 Florida Avenue, N. W.
Washington, D. C.

WASHINGTON,)
DISTRICT OF COLUMBIA) ss:

Subscribed and sworn to before me
this 27 day of May 1958.

/s/ Mildred M. Boyd,
Notary Public, D. C.

[Filed September 10, 1958]

EXHIBIT "C"

August 11, 1958

Mr. Edward S. Coffey,
New York Life Insurance Company,
Shoreham Building,
Washington, D. C.

Dear Sir:

Upon consideration of the record of the hearing afforded you on July 15, 1958, July 17, 1958, and July 29, 1958, in the matter of a com-

plaint by Dr. William B. Russell, I find that you did, in fact, make misleading representations and incomplete comparisons for the purpose of inducing Dr. Russell to lapse, surrender, or exchange his insurance then in force, as prohibited by sec. 35-426, D. C. Code, 1951 edition.

I, therefore, hereby suspend your license for a period beginning with the date of this letter and ending April 30, 1959.

Very truly yours,

/s/ Albert F. Jordan
Superintendent of Insurance

AFJ:M

CC to: Mr. Richard A. Mehler,
2000 K Street, N. W.
Washington, D. C.

Mr. Seymour S. Guthman,
Woodward Building
Washington, D. C.

[Filed October 1, 1958]

IN THE
UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

EDWARD S. COFFEY,	:	
Plaintiff,	:	
v.	:	Civil Action No. 2318-58
ALBERT F. JORDAN, Superintendent of Insurance, D. C.	:	
Defendant.	:	

ANSWER OF DEFENDANT TO COMPLAINT

First Defense

The complaint fails to state a claim upon which relief can be granted.

COUNT ONE

Second Defense

1. The allegations contained in paragraph 1 of the first count relate to jurisdiction and require no answer, however, if answer to said allegations be required, they are denied.
2. Defendant concedes that he can be sued in his official capacity, but denies that he can be sued individually in the same matter.
3. Defendant admits that plaintiff was a duly licensed life insurance solicitor prior to August 11, 1958. Defendant is unable to plead with regard to plaintiff's conclusion concerning what constitutes "a long time".
- 4 & 5. Defendant admits the allegations contained in paragraphs numbered 4 and 5 of the first count.
6. The allegations contained in paragraph numbered 6 of the first count are denied.
7. Defendant admits that the suspension referred to in paragraph 7 of the first count is in full force and effect. Defendant is without knowledge or information sufficient to form a belief concerning plaintiff's stated conclusion regarding immediate and irreparable injury.

COUNT TWO

Third Defense

1. With respect to the allegations contained in paragraph 1 of the second count, defendant admits that plaintiff's right to appeal a ruling of the defendant is provided by the Sections of the District of Columbia Code cited. Defendant denies that a question is presented which would provide jurisdiction in this Court pursuant to the provisions of the Fifth Amendment to the Constitution of the United States of America.
- 2 - 5. For answer to paragraphs 2, 3, 4, and 5 of the second count, defendant incorporates, by reference, the answers he made to paragraphs 2, 3, 4, and 5 of the first count.

6. Defendant denies the allegations contained in paragraph 6 of the second count.

/s/ Chester H. Gray
Corporation Counsel, D. C.

/s/ George C. Updegraff
Assistant Corporation Counsel, D. C.

/s/ Lyman J. Umstead
Assistant Corporation Counsel, D. C.
Attorneys for Defendant
District Building
Washington 4, D. C.

[Certificate of Service]

[Filed January 6, 1959]

PLAINTIFF'S PRE-TRIAL STATEMENT

Jurisdiction

This action in its Second Count, which is the only Count now before the Court, was brought under the provisions of D. C. Code, § 35-426 and § 35-427 as a statutory appeal from a ruling of the defendant who as Superintendent of Insurance of the District of Columbia on August 11, 1958 suspended the plaintiff's license as a life insurance solicitor from the date of said ruling to April 30, 1959. Jurisdiction of this Court was also invoked under the due process clause of the Fifth Amendment to the Constitution of the United States.

Facts

For more than twenty consecutive years past and particularly on August 11, 1958, the date of the defendant's ruling appealed from, the plaintiff acted and conducted business as a life insurance solicitor in the District of Columbia under and by virtue of a license duly issued to him pursuant to law. By letter dated January 5, 1958 (Plaintiff's Exhibits "A" and "B"), the defendant issued to plaintiff a rule to show cause why the plaintiff's said license should not be suspended or revoked under D. C. Code, § 35-426.

Hearings on the said rule to show cause were held by the defendant on July 15, 17, and 29, 1958 subsequent to which the ruling in question issued on August 11, 1958 (Plaintiff's Exhibit "C").

Statutes Involved

D. C. Code, § 35-426, reading in pertinent part:

"The Superintendent of Insurance may suspend or revoke the license of any life insurance . . . solicitor . . . if, after due investigation, notice and hearing, either before him or before any salaried employee of the insurance department designated by him whose report he may adopt, he determines that . . . the . . . solicitor . . . has made any misleading representations and/or incomplete . . . comparison of any policies or companies or concerning any companies to any person for the purpose or with the intention of inducing such person to lapse, forfeit, surrender, or exchange his insurance then in force"

D. C. Code, § 35-427, reading in pertinent part:

"Within thirty days after the . . . suspension of license . . . the . . . solicitor . . . aggrieved may appeal from the ruling of the superintendent to the District Court of the United States for the District of Columbia, in equity wherein, upon the relation of the superintendent, by representation of the corporation counsel, the superintendent shall be designated as defendant and the . . . solicitor . . . as plaintiff, and the said cause shall be docketed in said court and tried as an equity case"

Statement of Points

1. The ruling of the defendant is absent the findings and conclusions required by due process of law.
2. The ruling of the defendant is not supported by the evidence but rather is contrary to the evidence and to law.
3. In inviting and permitting private counsel for the complaining

witness to actively participate in the hearings and in effect to act as counsel for the defendant in the place and stead of the Corporation Counsel the defendant unlawfully abdicated and delegated the powers and authorities vested in him and in the Corporation Counsel with the result that the hearings were conducted in a manner not contemplated nor intended by law.

Proposed Stipulations

1. Plaintiff's Exhibits "A" and "B" being respectively the rule to show cause issued by defendant and the complaint therein referred to.
2. Plaintiff's Exhibit "C" being the ruling of the defendant appealed from.

Requests of Plaintiff

1. That the defendant be ordered to file herein either at the time of the trial of this cause or at such earlier time as may be convenient to the Court the following:
 - (a) A certified copy of the transcript of the hearings conducted by the defendant.
 - (b) Certified copies of each of the exhibits introduced in evidence at said hearings by the plaintiff herein and by the complainant below (complaining witness);
2. That copies of each of the exhibits referred to in (b) above be furnished forthwith to counsel for the plaintiff; and
3. That this cause be specially set for hearing on a date certain.

MEHLER & GOLDSBOROUGH

By /s/ Richard A. Mehler

* * *

[Filed January 6, 1959]

PRETRIAL STATEMENT OF DEFENDANT

Plaintiff was licensed as a life insurance solicitor in the District of Columbia for the license year beginning May 1, 1958 and ending April 30, 1959. Administrative hearings relating to certain conduct of the plaintiff as a life insurance solicitor were held by the defendant, Superintendent of Insurance for the District of Columbia, on July 15, 1958, July 17, 1958 and July 29, 1958. On the evidence adduced at said hearings, defendant suspended plaintiff's license from August 11, 1958 to April 30, 1959.

Plaintiff, in accordance with the provisions of Sec. 35-427, D. C. Code, 1951 Edition, appeals from the suspension order of the defendant. The record of the administrative proceeding contains substantial evidence supporting the conclusion reached by the defendant and, therefore, plaintiff's appeal therefrom should be dismissed.

Stipulations:

The entire record of the administrative hearings conducted by defendant be admitted into evidence without formal proof.

/s/ Chester H. Gray
Corporation Counsel, D. C.

/s/ George C. Updegraff
Assistant Corporation Counsel, D. C.

/s/ Lyman J. Umstead
Assistant Corporation Counsel, D. C.
Attorneys for Defendant

* * *

[Filed January 6, 1959]

PRETRIAL PROCEEDINGS

COFFEY,

Plaintiff

C. A. No. 2318-58

JORDAN,

Defendant

January 6, 1958

Pretrial statements of the parties fully set forth their respective contentions and no further statement by the Court is necessary.

D agrees to Ps proposed stipulations A, B & C.

P agrees to proposed stipulation of the D. In addition, P requests and D agrees to have record of administrative hearings certified as official records of the ~~District Government~~ D Superintendent of Insurance. D agrees to provide this record at the time this case is set for trial.

/s/ David A. Pine
JUDGE

* * *

[Filed May 5, 1959]

EXCERPTS FROM CERTIFIED RECORD OF OFFICIAL
TRANSCRIPT OF PROCEEDINGS

1.

Washington, D. C.
Wednesday, February 18, 1959.

*

*

*

*

3

PROCEEDINGS AND TRANSACTIONS

*

*

*

* *

MR. MEHLER: May it please the Court, this case is one which is in the nature of an appeal from a statutory ruling made by the defendant, the Superintendent of Insurance of the District of Columbia, by which for the period from the date of the ruling, which was August 11, 1957, to April 30th of this year, the defendant suspended the plaintiff's license as a life insurance solicitor in the District of Columbia.

4 THE COURT: Permanently?

MR. MEHLER: For that period, may it please the Court, from August the 11th, 1957 -- 1958, excuse me, to April 30th of this year.

There were three days of hearings held before the Superintendent and the record of those hearings and the exhibits that were introduced are now in the possession of the Corporation Counsel.

It has been stipulated between us that the record would be, of course, passed on to the Court and made a part of this hearing. And it is also provided for in the pretrial statement that that should be done.

And with the Court's permission I will then, without further ado, call upon Mr. Umstead for that record.

MR. UMSTEAD: Will you mark this Plaintiff's and Defendant's Exhibit No. 1?

THE DEPUTY CLERK: Plaintiff's and Defendant's Exhibit No. 1.

(Thereupon a record was marked by the Deputy Clerk as Plaintiff's and Defendant's Exhibit No. 1.)

MR. UMSTEAD: It is a joint exhibit. You can just mark it Plaintiff's exhibit. It doesn't matter.

MR. MEHLER: Your Honor, this is the record of the hearings below. Whether or not it should be denominated Plaintiff's exhibit is a question I feel --

5 THE COURT: I think Mr. Umstead said "Plaintiff's and Defendant's", did you not?

MR. UMSTEAD: That will be acceptable.

* * * *

7 MR. MEHLER: * * * In other words, we make this point, your Honor, that the statute itself, with some elaboration, indicates that the hearing before the Superintendent is to be a quasi-judicial hearing and,
8 therefore, it follows that the requirement of due process of law apply to that hearing before the Superintendent.

* * * *

THE COURT: What do you consider due process in this connection?

9 Findings of fact and conclusions of law?

MR. MEHLER: Yes, your Honor.

* * * *

18 MR. MEHLER: * * * Are we, that is to say, is the plaintiff, may
it please the Court, to attempt something that we know he cannot do, that
is, is he to conjecture, is he to speculate as to what mental processes,
as to what rationale were used by the defendant, the Superintendent of
Insurance, in exploring 361 pages of record and some large number of
exhibits in arriving at the naked conclusion, based in the statutory lan-
guage, that the plaintiff had, in fact, made misleading representations
19 and incomplete comparisons for the purpose of inducing an insured
to lapse or to surrender or, in the disjunctive, to exchange his policies
then in force?

If I were to depart from this point that I am making and which was
the first one denominated in our pleadings, our complaint, and in our
pretrial statement, then I would necessarily have to reach our second
point, which is that the conclusions of the defendant were not supported
by the evidence or were contrary to the evidence and to law, but, how,
your Honor, can I do that without knowing the bases upon which the
Superintendent acted?

What can I attack?

Am I to be called upon to plead my adversary's case? By that I
mean am I to be called upon to cull through this record, to speculate as
to what evidence therein contained might possibly tend to support the
ruling that the Superintendent made, and then to take off that hat and put
on another, and after having suggested to this Court what that evidence
might have been, to then attack it?

I can't do that, your Honor. The plaintiff can't do it.

And we say that the failure to make the findings in this case has
imposed an intolerable burden on counsel, on the party aggrieved, but,
most important, upon this Court.

20 Now, may it please the Court, under these circumstances we most
respectfully ask and pray that the decision of the Superintendent in

this case be annulled and that this Court issue an injunction restraining the enforcement of this ruling that is predicated, so far as we know, upon what, we don't know.

* * * *

- 21 MR. UMSTEAD: * * * With respect to the question of findings of fact and conclusions of law, I would say to the Court that the Superintendent of Insurance is an insurance man. He is not a lawyer. Whether he would know a conclusion of law as such if he were called upon to make one, I don't know.

* * * *

- 23 That is what we are claiming here: There is evidence to support the decision reached by the Superintendent. Even though --

THE COURT: You think we have, in view of the rather scant opinion in that letter?

MR. UMSTEAD: What is that, your Honor?

THE COURT: How do I know that there was evidence to support that rather scant judgment?

- 24 MR. UMSTEAD: The only way your Honor could tell the basis upon which this decision was reached would be to see if there is substantial evidence upon which the conclusion could be reached by the administrative official. There is no alternative to that, your Honor, I am sorry to say, but that, I think, is the basis upon which this case alone can be determined at this appeal level in the nature of an equity case.

There is no question about that.

I don't think that I could possibly bring the Superintendent of Insurance in here and place him on the stand with a view to delving into his mental processes.

* * * *

- 29 MR. MEHLER: * * * It has been held too many times, and it is law in this jurisdiction, that the court will not conjecture as to what the predicates were in the record on the basis of which the administrative board acted.

Again I suggest that is an intolerable burden and one which the courts have always refused to fulfill. I could, your Honor, review that record. I think that it is probably in many respects, important respects, committed to memory. What purpose would it serve except to belabor the time and the convenience and the docket of this court for me to stand here or for anyone else and to suggest to the Court the bases for the reasoning employed by someone else?

30 The best I could do would be to speculate and conjecture, were I to do it, and I submit that is the best that anyone else can do except the man who made the ruling himself.

* * * *

34 THE COURT: Did it seem to you to be a fair hearing?

MR. MEHLER: The hearing below? We were afforded our opportunities to present our evidence and to cross-examine and the oaths were taken, yes, your Honor.

THE COURT: And your sole contention here or your principal contention is that the Superintendent of Insurance was remiss in not filing the proper kind of a notice without findings of fact and conclusions of law.

Is that it?

MR. MEHLER: In failing to make findings of fact and, of course, we attack the ruling because our second point, may it please the Court, is simply that the ruling itself is contrary to the evidence and contrary to law, and not supported by the evidence.

35 THE COURT: In other words, there is no substantial evidence to support the findings.

Is that it?

MR. MEHLER: That is the very contention that we would urge and with every vigor, your Honor; but again we are rendered incapable, as a practical matter of arguing that because there are no findings.

There are no findings of fact.

THE COURT: Well, what do you expect the Court to do?

MR. MEHLER: Your Honor, we ask that under the circumstances, and in view of the requirements of due process of law, that the injunction

be entered and that the Superintendent be restrained and enjoined from enforcing this order which is void for the want of findings of fact.

THE COURT: Well, what findings of fact can this Court make in that respect?

MR. MEHLER: In that respect we would suggest only this, your Honor, that the findings of fact would simply recite that the ruling -- it would refer to the ruling made by the defendant in this case as being only the conclusion, couched in the statutory language, that the plaintiff had violated the Act, and that there was involved here the deprivation of a property right; that it was a quasi-judicial hearing to which --

36 THE COURT: It boils down to this: It is a pure matter of law and it isn't necessary to go into that record.

Is that it?

MR. MEHLER: Well, your Honor, I find myself --

THE COURT: What would I go into the record for, assuming I agree with you?

Why should I go into the record?

MR. MEHLER: I don't see how you can be called upon to do that --

THE COURT: And if I had to, what could I find? What could I do?

Could I say that there is substantial evidence there in the face of that finding which you say is defective?

MR. MEHLER: Which I say is what, your Honor?

THE COURT: Defective. You say it is illegal. You say it is void.

MR. MEHLER: That is the dilemma --

* * * *

[Filed March 27, 1959]

ORDER

This cause came on for hearing before the Court on a statutory appeal Sections 35-426 and 35-427, D. C. Code, 1951 Ed., from a ruling of the defendant Superintendent of Insurance of the District of Columbia. Upon consideration of the evidence adduced at the trial, the Court makes the following findings of fact and conclusions of law:

Findings of Fact

1. Plaintiff was licensed by the defendant as a life insurance solicitor in the District of Columbia for a period beginning May 1, 1958 and ending April 30, 1959.
2. Hearings, pursuant to notice given by defendant to plaintiff, relating to plaintiff's conduct as a life insurance solicitor were conducted by defendant on July 15, 1958, July 17, 1958, and July 29, 1958.
3. The plaintiff was represented by counsel at the administrative hearing.
4. Plaintiff's counsel participated in the administrative hearing and made no objection to any aspect of the proceedings.
5. Defendant notified the plaintiff by letter dated August 11, 1958 that his license to act as a life insurance solicitor in the District of Columbia was suspended until April 30, 1959.
6. Plaintiff was advised that the defendant's suspension order was based upon the record made at the administrative hearing which was held pursuant to Sec. 35-426, D. C. Code, 1951 Ed.
7. On September 10, 1958, the plaintiff filed his complaint wherein he sought to have the Court enjoin the suspension of his license and to have the Court consider his statutory appeal (Sections 35-426 and 35-427).
8. On October 14, 1958, plaintiff moved the Court for a preliminary injunction against the defendant and said motion was denied by the Court (Tamm, J.) on November 5, 1958.
9. The transcript of record of the administrative proceedings before the defendant was presented as a joint exhibit to this Court for its consideration.
10. Plaintiff introduced no evidence to establish alleged irreparable injury to him resulting from the license suspension to April 30, 1959.

Conclusions of Law

1. Plaintiff was given a hearing before the Superintendent of Insurance of the District of Columbia which satisfied the requirements of due process of law.
2. Plaintiff has failed to show that the decision of the defendant

was not supported by substantial evidence.

3. The Court concludes from its consideration of the administrative record that the decision of the defendant was supported by substantial evidence.

4. Plaintiff has failed to make a showing to the Court of any arbitrary or capricious action by the defendant.

5. The Court is of the opinion that the decision of the defendant was not the result of arbitrary or capricious action by the defendant.

6. The defendant Superintendent of Insurance complied fully with the statutory provisions of law relating to his authority to revoke or suspend an insurance solicitor's license.

7. The plaintiff is not entitled to the relief for which he prays.

WHEREFORE, it is by the Court this 27th day of March, 1959

ORDERED, that judgment be entered in favor of the defendant and that the application of the plaintiff for relief be denied.

/s/ Joseph R. Jackson
JUDGE

[Certificate of Service]

[Filed March 30, 1959]

NOTICE OF APPEAL

Notice is hereby given this 30th day of March, 1959, that the plaintiff, Edward S. Coffey, hereby appeals to the United States Court of Appeals for the District of Columbia from the judgment of this Court entered on the 27th day of March, 1959 in favor of the defendant, Albert F. Jordan, against said plaintiff.

MEHLER & GOLDSBOROUGH

By /s/ Richard A. Mehler
Attorney for Plaintiff

* * *

[Certificate of Mailing]

BRIEF FOR APPELLEE

UNITED STATES COURT OF APPEALS
For The District Of Columbia Circuit

No. 15,062

*United States Court of Appeals
For the
District of Columbia Circuit*

FILED MAY 19 1959

EDWARD S. COFFEY,
Appellant,

Joseph W. Stewart
CLERK

v.

ALBERT F. JORDAN,
Individually, and as Superintendent,
Department of Insurance, District of Columbia,
Appellee.

Appeal From The United States District Court
For The District Of Columbia

CHESTER H. GRAY,
Corporation Counsel, D. C.,
MILTON D. KORMAN,
Principal Assistant
Corporation Counsel, D. C.,
HUBERT B. PAIR,
Assistant Corporation
Counsel, D. C.,
Attorneys for Appellee,
District Building,
Washington 4, D. C.

STATEMENT OF QUESTION PRESENTED

Where, in administrative proceedings, appellant was given notice of charges against him and full opportunity to be heard, and where, after administrative determination, he, under Section 35-427, D. C. Code, 1951, exercised his right to appeal to the equity jurisdiction of the District Court, which court heard and decided the case, were not all requirements of due process of law satisfied?

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<u>Absent any showing in the record of invalidity</u> <u>in the administrative action, the court be-</u> <u>low did not err when it entered judgment for</u> <u>the appellee.</u>	4
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<u>Atlantic Insurance Agency v. Jordan,</u> 97 U. S. App. D. C. 184, 229 F. 2d 758	5
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DISTRICT OF COLUMBIA CODE,
1951, CITED

Section 35-426	2, 6, 9
Section 35-427	2, 4, 6
Section 35-1340	5
Section 35-1349.....	5

OTHER AUTHORITIES CITED

Corpus Juris Secundum, Vol. 73, Section 302	
pp. 552-559	9

UNITED STATES COURT OF APPEALS
For The District Of Columbia Circuit

No. 15,062

EDWARD S. COFFEY, Appellant,

v.

ALBERT F. JORDAN,
Individually, and as Superintendent,
Department of Insurance, District of Columbia,
Appellee.

Appeal From The United States District Court
For The District Of Columbia

BRIEF FOR APPELLEE

COUNTER STATEMENT OF THE CASE

Appellant was, prior to August 11, 1958, licensed as a life-insurance solicitor in the District of Columbia for the license year commencing May 1, 1958 and ending April 30, 1959.

On or about May 20, 1958, one Dr. William B. Russell complained to appellee respecting the conduct of appellant as a life-insurance solicitor

(J. A. 7-8). Appellee, on June 5, 1958, served appellant with a written notice to show cause why his license should not be suspended or revoked under the provisions of Section 35-426, D. C. Code, 1951. Transmitted with the notice was a copy of Dr. Russell's complaint (J. A. 6-7).

Pursuant to such notice, appellee, on July 15, 17 and 29, 1958, conducted a hearing, and, on August 11, 1958, made and served upon appellant by registered mail the following ruling:

"Upon consideration of the record of the hearing afforded you on July 15, 1958, July 17, 1958, and July 29, 1958, in the matter of a complaint by Dr. William B. Russell, I find that you did, in fact, make misleading representations and incomplete comparisons for the purpose of inducing Dr. Russell to lapse, surrender, or exchange his insurance then in force, as prohibited by section 35-426, D. C. Code, 1951 edition.

"I, therefore, hereby suspend your license for a period beginning with the date of this letter and ending April 30, 1959." (J.A. 6)

As permitted by Section 35-427, D. C. Code, 1951, appellant, on September 10, 1958, filed in the court below a complaint by which it was sought, among other relief, to require appellee to restore and maintain in full force and effect appellant's said license (J. A. 2-5). In so far as here pertinent, the complaint alleged that appellee's action was arbitrary, capricious and contrary to law, in that:

"(a) The findings * * * recited in his said order dated August 11, 1958 (Exhibit 'C') are not supported by the evidence but rather are contrary to the evidence introduced at the hearings * * *.

"(b) The said order does not contain and the defendant otherwise failed to make the proper findings and conclusions required by due process of law." (J.A. 5.)

On October 14, 1958, appellant moved the court to grant preliminarily the relief sought in the complaint. The motion was considered by Judge Tamm and, on November 5, 1958, denied, and, by order, the case was advanced for trial (J. A. 21).

The action was tried to the court without a jury on February 18, 1959 and, at the outset, the record of the administrative proceedings was received in evidence as "plaintiff's and defendant's exhibit numbered 1" (J.A. 16). Appellant did not attack the sufficiency of the evidence (J.A. 17) and he conceded that he was afforded an opportunity to present evidence and to cross-examine witnesses (J. A. 19).

After consideration of all of the evidence, the court below, on March 27, 1959, made findings of fact and conclusions of law, on the basis of which it denied appellant the relief which he sought and entered judgment in favor of appellee (J. A. 20-22).

SUMMARY OF THE ARGUMENT

Appellant failed utterly to establish the invalidity of the administrative action of which he complained. The court below, therefore, committed no error when it denied appellant the injunctive relief which he sought and entered judgment for the appellee.

ARGUMENT

Absent any showing in the record of invalidity in the administrative action, the court below did not err when it entered judgment for the appellee.

Appellant's principal contention is that the order suspending his license as a life-insurance solicitor during the period commencing August 11, 1958 and ending April 30, 1959, was not based upon findings of fact allegedly required by due process of law.

The very same contention was made to and rejected by the court below after proceedings pursuant to Section 35-427, D. C. Code, 1951.

That section provides in pertinent part that:

"Within thirty days after the * * * suspension of license * * * the * * * solicitor * * * aggrieved may appeal from the ruling of the superintendent to the District Court of the United States for the District of Columbia, in equity * * * and the said cause shall be docketed in said court and tried as an equity case. * * *"

At the commencement of such proceedings in this case, there was

received in evidence the complete record of the hearing conducted by the appellee together with all exhibits identified therein (J. A. 16). Appellant introduced no additional evidence. He made no showing that the appellee acted beyond the scope of his statutory authority, that the order of suspension was illegal or unreasonable or that the findings upon which the order was based were without support in substantial evidence.

Having thus exercised his statutory right to a hearing, appellant manifestly failed utterly to demonstrate any invalidity in the administrative action. See and compare Columbia Auto Loan, Inc. v. Jordan, 1952, 90 U. S. App. D. C. 222, 196 F. 2d 568, which was an action pursuant to Sections 35-1340 and 35-1349, D. C. Code, 1951.

Interestingly enough, appellant did not in the proceedings below nor does he now question the substantiality of the evidence upon which the appellee based his order. What appellant did was to rest his case upon the bare and unsupported contention that the order suspending his license was not based upon written findings which met the alleged requirements of due process of law.

In this connection, appellant relies upon cases, such as Atlantic Insurance Agency v. Jordan, 97 U. S. App. D. C. 184, 229 F. 2d 758, and Jordan v. American Eagle Fire Ins., 83 U. S. App. D. C. 192, 169 F. 2d 281, which are either distinguishable on their facts or are clearly

without application. Likewise are Saginaw Broadcasting Co. v. Federal Communications Commission, 68 U. S. App. D. C. 282, 96 F. 2d 554, and Tri-State Broadcasting Co. v. Federal Communications Commission, 68 U. S. App. D. C. 292, 96 F. 2d 564, where there was a specific statutory requirement that the commission make findings of fact.

In Boudin v. Dulles, 98 U. S. App. D. C. 305, 235 F. 2d 532, a section of the passport regulations provided for the denial of a passport to three enumerated classes of persons. It did not appear from any finding, however, whether the denial of the passport involved was based upon evidence openly produced or in whole or in part upon secret information not disclosed to the applicant.

In Goldman v. Pink, 1 N.Y.S. 2d 562, 253 App. Div. 862, strongly relied upon by appellant as a case in point, all that was decided was that the decision of the Superintendent of Insurance of the State of New York failed to comply with the requirement that " * * * findings must be made as to the identical act or acts which constitute the violation."

Here there is no statutory requirement that the appellee make findings of fact. See Sections 35-426 and 35-427, D. C. Code, 1951. But even if such findings were required as an essential element of due process of law, it seems too clear for further discussion that the notice and hearing and thereafter the ruling of the appellee were sufficient for that purpose.

In any event, appellant having failed to complain to the appellee respecting any inadequacy in his findings or to request appellee to make additional findings, he should not be heard to complain on judicial review.

So it was in Williams v. International Shoe Co., 213 S. W. 2d 657, where the findings of the industrial commission denying a claim for compensation were challenged. The court said:

"While the act itself makes no provision for such procedure, it has been well said that if a party feels that the Commission's findings of fact are not clear, leave the reason for its conclusion and award in doubt, or should be amplified for any other reason, he should ask the Commission to modify its findings by making additional or special findings instead of first complaining in the appellate court that findings of fact, which are not inconsistent with the result which has been reached, do not contain specific findings upon all disputed questions of fact which must necessarily have been decided by the Commission in order to make and support the award. State ex rel. Probst v. Haid, 333 Mo. 390, 62 S. W. 2d 869; Smith v. General Motors Corporation, Mo. Sup., 189 S. W. 2d 259; Scott v. Wheelock Bros., Mo. Supp., 209 S. W. 2d 149; Jones v. Remington Arms Co., Mo. App., 209 S. W. 2d 156." [pp. 660-661]

See also Evans v. Farmers Mutual Hail Insurance Co., 217 S. W. 2d 705.

Appellant contends, however, that, by reason of the failure of appellee to make adequate findings of fact, it was impossible for him to demonstrate that the ruling was contrary to the evidence and the law. But, as pointed out above, appellant introduced no evidence at the trial,

but deemed it sufficient to introduce in evidence the complete record of the proceedings conducted by appellee. The trial court, after examination of the record, apparently experienced none of the difficulty which plagued appellant, because, at the conclusion of the trial, the court made the following findings of fact and conclusions of law:

FINDINGS OF FACT

*

*

*

9. The transcript of record of the administrative proceedings before the defendant was presented as a joint exhibit to this Court for its consideration.

10. Plaintiff introduced no evidence to establish alleged irreparable injury to him resulting from the license suspension to April 30, 1959.

CONCLUSIONS OF LAW

1. Plaintiff was given a hearing before the Superintendent of Insurance of the District of Columbia which satisfied the requirements of due process of law.

2. Plaintiff has failed to show that the decision of the defendant was not supported by substantial evidence.

3. The Court concludes from its consideration of the administrative record that the decision of the defendant was supported by substantial evidence.

4. Plaintiff has failed to make a showing to the Court of any arbitrary or capricious action by the defendant.

5. The Court is of the opinion that the decision of the defendant was not the result of arbitrary or capricious action by the defendant.

6. The defendant Superintendent of Insurance complied fully with the statutory provisions of law relating to his authority to revoke or suspend an insurance solicitor's license.

7. The plaintiff is not entitled to the relief for which he prays.

On the authority of decisions of this Court, a presumption of correctness attached to appellee's administrative determination that appellant was in fact guilty of conduct enjoined by Section 35-426, D. C. Code, 1951.

In the absence, therefore, of clear and convincing evidence tending to establish the contrary, it must be presumed that appellee properly discharged his official duties. 73 C.J.S. 302, pp. 552-559; Hammond v. Hull, et al., 76 U. S. App. D. C. 301, 131 F. 2d 23; Proctor and Gamble v. Coe, 68 App. D. C. 246, 249, 96 F. 2d 518. See also Pittsburgh S. S. Co. v. Brown, et al. (7th Cir.), 171 F. 2d 175.

CONCLUSION

In view of the foregoing, it is respectfully submitted that the record discloses no error affecting appellant's substantial rights. The judgment of the court below should, therefore, be affirmed.

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